APPENDIX

Exhibit A

Before SIBLEY, McCORD and WALLER,

Circuit Judges.

WALLER, Circuit Judge: In the fall of 1939 the United States took, by condemnation, the fee simple title to 5767 acres located within the confines of the Southwest Tampa Storm Sewer Drainage District (hereinafter referred to as "the Drainage District") for use as an Army Air Base. In due course a jury determined the amount of just compensation and the sum was deposited with the Court. The fee simple title to some of the lands had been forfeited to the Trustees of the Internal Improvement Fund of the State of Florida (hereinafter referred to as "the Trustees") under the so-called "Murphy Act" (Sec. 9 of Chapter 18296, Laws of Florida, 1937), for non-payment of state and county taxes. There was a large accumulation of delinquent drainage taxes on all of the lands involved. The award in compensation was less than the amount of the delinquent drainage taxes. Bonds issued by the Drainage District were largely in default, the largest holder of which was the Reconstruction Finance Corporation which had bought same with the purpose of aiding the Drainage District in its financial rehabilitation. The State claimed the full amount of the award for all lands to which it owned the fee simple title. There was also a controversy between the State and the District, or its bondholders, as to how the award should be distributed in the payment of the taxes due State, County, and Drainage District on lands

which had not been forfeited to the State under the Murphy Act. The record title holder, or the party who owned the lands prior to the loss of his title by the Murphy Act has faded from the scene. The award was insufficient to discharge the lien of all accumulated taxes.

The chief issue arises out of the conflict between the State, represented by the Trustees of the Internal Improvement Fund, as the fee simple owner of the title to those lands acquired under the Murphy Act, and the District, or its bondholders, over the question as to whether or not the State is entitled to receive the award, or any part thereof, or whether or not the title of the State is subject to liens for delinquent drainage taxes due the District.

Prior to 1927 the lien for taxes of the State and County was superior to the lien of the Drainage District, but the Legislature, by the enactment of Sec. 2 of Chapter 12040, Acts of 1927, made drainage taxes of equal dignity with state and county taxes.

The Supreme Court of Florida held in Prince Hall Masonic Building Association vs. City of Jacksonville, 149 Fla. 109, 6 So. 2d 250, that the tax liens of the State which were more than two years old on June 9, 1937, merged into the State's legal title under the Murphy Act. (See opinion on rehearing, 6 So. 2d 255). Therefore, the State had no tax liens on the lands which it acquired under the Murphy Act. That Court also held, in Carlile vs. Melbourne-Tillman Drainage District, 143 Fla. 335, 196 So. 687, that the title to land in a drainage district acquired under the Murphy Act went to the State, subject to, and burdened with, the lien of drainage district taxes, citing as authority Bice vs. Haines City, 195 So. 919. See also Baldwin Drain-

age District, a corporation, vs. Macclenny Turpentine Company, decided April 4, 1944, but not yet officially reported. It was also held in Prince Hall Masonic Building Association vs. City of Jacksonville, supra, that although the lien of a municipality under its tax certificates was not lost when the lands covered by such certificates were taken by the State under the Murphy Act, nevertheless the municipality could not enforce its lien against the State in the absence of specific authority from the Legislature to do so. The State could not be sued without its consent.

The foregoing cases reveal that: (1) the State has the legal title to lands which it acquired on delinquent and unredeemed certificates which were more than two years old on June 9, 1937; (2) that the lien of the State under such delinquent tax certificates merged into the State's fee simple title to such lands; and (3) that the lien of the District for drainage taxes on such lands remained outstanding but unenforcible so long as the lands were owned by the State.

Since the lien of the State for delinquent taxes on lands acquired under the Murphy Act has merged into the legal title, the State no longer has any lien for taxes on such lands, and, therefore, having no lien, it can have neither priority nor parity in liens for such taxes. The drainage taxes remain outstanding, even if unenforcible, despite State ownership.

We are not confronted with an effort on the part of the District to foreclose its drainage taxes. We are called upon to determine whether or not the award must be applied to the satisfaction of the tax liens of the District to the end that the United States may have a title free

and clear of all liens and encumbrances, which it has a right to acquire through the condemnation proceedings. Under the decisions of the Florida Supreme Court, which are binding on us, the drainage taxes remained a lien, but the tax liens of the State, having merged into its legal title, were no longer a lien or an encumbrance on the title of the United States. Paradoxical as it may seem, the State by becoming the owner of the greater estate, to-wit, the fee simple title in said lands, became the holder of a diminished right in this case. It became the owner of the title subject to tax liens of the District which were much in excess of the value of the lands. By the acquisition of the fee simple title it lost its liens, and the lien of the Drainage District became the first lien. The United States is entitled to have that lien satisfied out of the award in compensation. If it should seem unusual or unjust that the State (whose rights are generally prior, or at least equal, to those of its political subdivisions) in the circumstances here gets nothing while the subdivision gets all, the Courts can only say that this is not a web of their weaving, but is the result of legislative enactments. The order of the Court below as to the Murphy lands is according to law and is approved.

The Trustees contend that the Court below was without jurisdiction in that the District and the bondholders are not permitted to sue the State without its consent. We do not agree. Assuming that the Federal Government has the right through eminent domain to take lands belonging to a state, which is not questioned, this case then presents merely a proceeding in eminent domain in which is drawn into controversy the question of the distribution of the award. The State, the District, and the bondholders claim-

ed the award, and a judicial determination of the issue is appropriate to the exercise of the power of eminent domain.

The Court below was without error in its order relating to the distribution of the award for the payment of state, county, and drainage taxes on a parity basis as to lands to which the State did not have the fee simple title under the Murphy Act.

The judgment below is
AFFIRMED.

A True copy:
Teste:

(SEAL) /s/ OAKLEY F. DODD

Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

Exhibit B

"This Act shall remain in full force and effect for two years from the date same shall become a law and at expiration of such four year period, then the fee simple title to all lands, against which there remain outstanding tax certificates which on the date this Act becomes a law, are more than two years old, shall become absolutely vested in State of Florida, and every right, title or interest of every nature or kind whatsoever of former owner of said property or anyone claiming by, through or under him, or anyone holding lien thereon shall cease, terminate and be at an end, and the State of Florida thereafter, through

the Trustees of Internal Improvement Fund shall be authorized and empowered to sell the said lands to the highest and best bidder for cash at such time and after giving such notice and according to such rules and regulations as may be fixed and adopted from time to time by the said Trustees of the Internal Improvement Fund.

"After the expiration of two years from date this Act shall become a law no court in this State, either Federal or State shall have jurisdiction to entertain any suit brought by the former owner of said land or anyone claiming by, through or under him for the purpose of questioning, or in any way litigating or contesting the title of the State of Florida, or its grantee to said land."

Section 9, Chapter 18,296, Laws
of Florida, Acts of 1937.

Exhibit C

Portion of Section 1114, RGS 1920, deemed necessary for consideration in connection with this case:

"After the lists of lands, with the assessed benefits and the decree and judgment of court, have been filed in the office of the clerk of the circuit court as provided in Section 1112, then the board of supervisors shall without any unnecessary delay, *levy a tax* of such portion of said benefits on all lands, in the district to which benefits have been assessed as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and improvements as shown in said 'Plan of Reclamation' and in

carrying out the objects of said district, and in addition thereto ten per cent of said total amount for emergencies. The said tax shall be apportioned to and *levied on each tract of land* in said district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as provided hereinafter, then the amount of the interest (as estimated by said board of supervisors) which will accrue on such bonds shall be included and added to the said tax, * * * " (Italics ours.)

Exhibit D

Portion of Section 1115, RGS 1920, as amended by Chapter 9129, Laws of Florida 1923, deemed necessary for consideration in connection with this case:

"Section 1115. Board to Levy Amount of Annual Installments; Certificate to Collectors.—The Board of Supervisors shall each year thereafter determine, order and levy the amount of the annual installments of the total taxes levied under the preceding section, which shall become due and be collected during said year at the same time that State and County taxes are due and collected, which said annual installment and levy shall be evidenced and certified by the said Board not later than November 1st of each year to the collector of each county in which lands and other property of said district are situated. The certificate of such installment tax shall be substantially in the following form:

STATE OF FLORIDA }
COUNTY OF..... }

This is to certify that by virtue and authority of the provisions of Article I, Chapter 3, Title 7, First Division of the Revised General Statutes of Florida, the board of supervisors of '..... Drainage District of Florida' have and do hereby levy the sum of $..... as the annual installment of tax for the year 19..... *of the total tax levied under the provisions of Section 1114* of said Article, which said total tax has heretofore been certified to the clerk of the Circuit Court of your County; * * * ". (Italics ours.)

Exhibit E

Portion of Section 1119, RGS 1920, as amended by Chapter 9129, Laws of Florida 1923, deemed necessary for consideration in connection with this case:

"Section 1119. Taxes and Costs a Lien on Land Against which Taxes Levied; Sub-Drainage Districts; Form of Certificate Asserting Lien.—All drainage taxes provided for in this Article, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of assessment thereof until paid, constitute a lien, *to which only the lien of the State for General State, County School and Road taxes shall be paramount,* upon all the lands against which such taxes shall be

levied as is provided in this Article; Provided, that if any drainage district or districts organized or established under the provisions of this article shall be within the boundaries of a district or districts theretofore established under the law of this State, the district or districts last organized and established shall be designated as sub-drainage districts, and the lien for taxes assessed or levied for the purposes of such sub-drainage districts, with the penalties for default in the payment thereof and all costs incurred, shall be subject to the prior lien for drainage taxes assessed or levied for the district or districts first established, as well as the lien for State and County taxes, and the certificate asserting such lien shall so state; PROVIDED, FURTHER, That a sale of any of the lands within a drainage district for State and County taxes shall not operate to relieve or release the lands so sold from the lien for subsequent installments or drainage taxes, which lien may be enforced as against such lands as though no such sale thereof had been made. Such lien for drainage taxes shall be evidenced by certificate substantially in the following form, to-wit:

STATE OF FLORIDA }
} ss.
COUNTY OF..... }

To.....Clerk of the
Circuit Court of said County:

This is to certify that by virtue and authority of the provisions of Article 1, Chapter 3, Title 7, First Division of the Revised General Statutes of Florida, the board of supervisors of.....Drainage District, in which are situated lands in the following counties,.....in the State of Florida, have and do hereby certify the taxes authorized by the said statute, which tax and the land against which the same are levied in your county, are described in the following table, in which table are: First, the names of the present owners of said land so far as known to the board of supervisors or the owners of said land as they appear in the decree of the Circuit Court organizing said districts; second, the descriptions of the said lands opposite the names of said owners; and third, the amount of said taxes levied on each tract of land.

(Here insert such table)

The said tax shall be payable in annual installments, the amount of each installment as well as the amount of the maintenance tax will be determined and certified to the county collector of your county not later

than the first day of November of each year. The aforesaid tax and such maintenance taxes as may be levied from time to time are hereby declared a lien, to which only the lien of the State for general State, County, School and Road taxes shall be paramount, upon all lands herein and heretofore described.

WITNESS the signature of the president of said board of supervisors, attested by the seal of the said district, and the signature of the secretary of said board, this the.....day of....., A. D. 19.....

.....
President

(SEAL).....
Secretary.

Exhibit F

Title to Act and that part of Section 2 and 4 of Chapter 12040, Laws of Florida 1927, deemed necessary for consideration in connection with this case:

"AN ACT Relating to General Drainage; to Amend Section 1114 of the Revised General Statutes of Florida; to Amend Section 1119 of the Revised General Statutes of Florida, as amended by Chapter 9129, Laws of Florida, Acts of 1923; to Amend Section 1138 of the Revised General Statutes by Chapter 9129, Laws of Florida, Acts of 1923; all of said Sections Relating to General Drainage.

* * * * *

"Section 2. That Section 1119 of the Revised General Statutes of Florida as amended by Chapter 9129,

Laws of Florida, Acts of 1923, be and the same is hereby amended to read as follows:

"Section 1119. TAXES AND COSTS A LIEN ON LAND AGAINST WHICH TAXES LEVIED; SUB-DRAINAGE DISTRICTS; FORM OF CERTIFICATE ASSERTING LIEN.—All Drainage taxes provided for in this Article, together, with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of assessment thereof until paid, constitute a lien of equal dignity with the liens for State and County taxes, and other taxes of equal dignity with State and County taxes, upon all the lands against which such taxes shall be levied as is provided in this article: * * *

"Section 4. All laws and parts of laws in conflict herewith are hereby repealed."

Exhibit G

Portion of Section 696, RGS 1920, relating to lien of State and County taxes:

" * * * All real and personal property shall be subject to taxation on the first day of January of each year, and this Chapter shall create a lien upon such property for the purposes thereof superior to all others, * * * "

Exhibit H

Chapter 10040, Laws of Florida 1925, re-enacted by Section 1, Chapter 14572, and Section 2 of Chapter 17442, Acts of 1929 and 1935:

> "All taxes imposed pursuant to the constitution and laws of this State shall be a first lien superior to all other liens on any property against which such taxes have been assessed which shall be continued in full force and effect until discharged by payment, * * * "